

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 95 of 2016

Arising Out of P.S. Case No.-265 Year-1992 Thana-SAKRA District-
MUZAFFARPUR

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1. Mahesh Paswan, S/o late Sukha Paswan.

2. Chhathu Paswan @ Chhaththu Paswan, S/o late Roopdeo Paswan.

3. Vijay Paswan, S/o late Ramchandra Paswan.

All residents of village - Mahammadpur Shiv Ram, P.S. Sakra,
District - Muzaffarpur.

.... Appellant/s

Versus

The State of Bihar.

.... Opposite Party/s

WITH

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Criminal Appeal (SJ) No. 70 of 2016

Arising Out of P.S. Case No.-265 Year-1992 Thana-SAKRA District-
MUZAFFARPUR

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Ajay Kumar Singh, S/o Ramautar Singh, resident of Village-
Mahammadpur Lalse, P.S.-Sakra, District-Muzaffarpur.

.... Appellant/s

Versus

The State of Bihar.

.... Opposite Party/s

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Appearance :

(In CR. APP (SJ) No.95 of 2016)

For the Appellant/s : Mr. Mani Bhushan Kumar, Adv.

For the State : Mr. Binod Bihari Singh, APP

(In CR. APP (SJ) No.70 of 2016)

For the Appellant/s : Mr. Sanjay Kumar @ S.K. Adv.



For the State : Mr. Abhay Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT & ORDER

Date: 10-08-2018

Both the appeals have been heard together and are being disposed of by this common judgment.

2. The appellants have been convicted under Sections 396 and 412 of the Indian Penal Code (*in short the I.P.C.*) by judgment dated 20.01.2016, passed by the learned 12th Addl. District & Sessions Judge, Muzaffarpur in Sessions Trial No. 553 of 1993, arising out of Sakra P.S. Case No. 265 of 1992, and by order dated 23.01.2016, they have been sentenced to undergo rigorous imprisonment for ten years, to pay a fine of Rs. 5,000/- each and in default of payment of fine, to further suffer imprisonment for one year for the offence under Section 396 of the I.P.C. and rigorous imprisonment for five years, to pay a fine of Rs. 2,000/- each and in default of payment of fine, to further suffer imprisonment for six months for the offence under Section 412 of the I.P.C. The sentences have been directed to run concurrently.

3. Recovery of the looted articles from the constructive possession of the appellants is the basis for convicting and sentencing them in the aforesaid case.



4. The First Information Report has been lodged by Baidyanath Prasad Singh (informant/P.W. 3), who has alleged that on 17.12.1992, he was informed by one Shashi Ranjan (not examined) of Village-Mohammadpur Shivram that his mother-in-law has been killed. On such information, P.W. 3 came to the house of his mother-in-law and found her dead. He was informed by one Mahasundari Devi (P.W. 4), who used to take care of the deceased, that she had gone to her house when the occurrence had taken place. When she came back, even on repeated calls, the deceased did not open the house. Then she entered the house through the backdoor and found that the deceased was lying dead on a cot without her clothes. Aforesaid Mahasundari Devi also informed P.W. 3 that a quilt was found to have been put over the body of the deceased. Some of the articles in use of the deceased and her granddaughter (P.W. 6) were also found missing. The deceased, P.W. 3 has stated, was about seventy five years old and because of her having bequeathed her property in favour of her granddaughter, her agnates were unhappy with her. The informant/P.W. 3 has also stated that some land belonging to the deceased was attempted to be sold on one occasion, when an attempt was made by the agnates to have the same purchased on a lesser price. When the same did



not happen, it irked the agnates. It was, therefore, suspected by P.W. 3 that the deceased has been killed and her personal belongings had been taken away.

5. On the aforesaid *fardbeyan* statement of the informant/P.W. 3, a case *vide* Sakra P.S. Case No. 265 of 1992, dated 17.12.1992, was registered for investigation for the offences under Sections 302 and 380 of the I.P.C.

6. However, after investigation, the police submitted charge-sheet against the appellants under Sections 396 and 412 of the I.P.C.; whereupon cognizance was taken and the case was committed to the Court of *Sessions* for trial.

7. The Trial Court, after examining eleven witnesses on behalf of the prosecution and one on behalf of the defence, convicted and sentenced the appellants as aforesaid.

8. The learned Advocates appearing for the appellants, while assailing the judgment and order of conviction, have submitted that there is no evidence whatsoever with respect to commission of the offence under Section 396 of the I.P.C. by the appellants. Only on the basis of some recovery of looted articles from the constructive possession of the appellants, the Trial Court has presumed that they had participate in the occurrence and,



therefore, their conviction under Section 396 of the I.P.C. is without any basis and unsustainable in the eyes of law. It has further been urged that even with respect to the charge under Section 412 of the I.P.C., there is nothing on record to even remotely infer that the appellants had knowledge that what was recovered from their possession was the property obtained in *dacoity*.

9. The learned Advocates have also stated that the implication of the appellants in this case is only at the instance of the 2nd Investigating Officer of this case, viz. Jyoti Narayan Singh (P.W. 7), who had gone in cahoots with the agnates of the deceased, especially P.Ws. 1 and 5, who have pulled wires from behind and have deliberately got the recovery of the looted articles from the constructive possession of the appellants. It has been submitted that this effort by P.Ws. 1 and 5, with active support from P.W. 7, has been made in order to turn the gaze of investigation from them (agnates) to other persons, so that in future, no finger is raised against them.

10. In order to support the aforesaid contention raised on behalf of the appellants, the learned Advocates have drawn the attention of this Court to the deposition of the prosecution witnesses.

11. Rajeshwar Prasad Singh, Bindeshwar



Prasad Singh, Dinesh Prasad Singh and Jay Kishore Singh, who have been examined as P.Ws. 1, 2, 5 and 11 respectively, are the co-villagers of the deceased, who had definite interest in diverting the line of investigation to somebody else. P.W. 1/Rajeshwar Prasad Singh has deposed before the Trial Court that in his presence recovery was made from the mustered field of appellant/Mahesh Paswan (*Cr. Appeal (SJ) No. 95 of 2016*). He has also testified to the fact that Bindeshwar Prasad Singh (P.W. 2), Dinesh Prasad Singh (P.W. 5) and Jay Kishore Singh (P.W. 11) were present at the time of recovery. From the field of appellant/Mahesh Paswan, *sari*, utensils and a black box were recovered. He has also deposed before the Trial Court that on the confession of appellant/Vijay Paswan (*Cr. Appeal (SJ) No. 95 of 2016*), some recovery was made from the bamboo field of one Lager Paswan. On the pointing of a co-accused/Dhanichand Paswan, some looted articles were recovered from beneath the fire wood kept in his house. On the pointing of appellant/Ajay Kumar Singh (*Cr. Appeal (SJ) No. 70 of 2016*), a sewing machine and a utensil, over which the name of the husband of the deceased was scribed, were found from a thatched house. Similarly, on the pointing of appellant/Chhathu Paswan @ Chhaththu Paswan (*Cr. Appeal (SJ) No. 95 of 2016*) also, certain articles were recovered.



P.W. 1 has proved the seizure-list (Exhibits- 1, 1/2, 1/3 and 1/4).

12. Similar statements have been made by P.W. 2/Bindeshwar Prasad Singh, P.W. 5/Dinesh Prasad Singh and P.W. 11/Jay Kishore Singh about the factum of recovery of looted articles from the constructive possession of the appellants.

13. Renu Devi, who has been examined as P.W. 6, is the granddaughter of the deceased (daughter of the informant/P.W. 3). She has deposed that she learnt on 17.12.1992 that a *dacoity* had been committed in the house of her grandmother, in which, she was killed. On such information, she came to the village of the deceased and found her dead. All the articles/valuables in the house were found missing. She has testified to the fact that she participated in the Test Identification Parade, where she identified the looted articles. She has given the details as to how she identified the looted articles.

14. Thus, from the deposition of the aforesaid witnesses, viz. P.Ws. 1, 2, 5, 6 and 11, it stands established that the looted articles were recovered within a short span of time from the date of occurrence, from the constructive possession of the appellants.

15. The learned Advocate appearing for



appellant/Ajay Kumar Singh (*Cr. Appeal (SJ) No. 70 of 2016*), has, however, submitted that from the deposition of the Investigating Officer (P.W. 7), it becomes very clear that the place from where the sewing machine, one of the looted articles, was recovered was far away from his place of residence and the thatched house from where it was recovered, does not belong to him.

16. Be that as it may, the recovery of the articles and their identification by P.W. 6, who was competent to identify as she had stayed with her grandmother (deceased), the offence under Section 412 of the I.P.C. is squarely made out as against the appellants.

17. Jyoti Narayan Singh (P.W. 7) is the 2nd Investigating Officer of this case, who has stated that he had taken the charge of investigation from Saiyad Jahur Alam (P.W. 8), after four days of the registration of the case. He has stated that during the course of investigation, appellant/Mahesh Paswan (*Cr. Appeal (SJ) No. 95 of 2016*), was arrested and on the basis of his confession, his mustered field was raided and from there, looted articles were recovered. Similarly, he has stated that on the statement of the other accused persons/appellants, recovery of looted articles was made. He has also testified to the holding of Test Identification Parade where P.W. 6 identified the



articles.

18. The basis argument of the learned Advocates for the appellants is that P.Ws. 1, 2, 5, 7 and 11, who are the agnates of the deceased, had actually tried to deflect the course of investigation or else suspicion would have been pointed towards them. Only because of such motive, it has been urged, a fake seizure-list was signed by them.

19. There is no material in the entire records to lend credence to the aforesaid submissions made on behalf of the appellants except for the fact that within four days, the investigation was handed over to P.W. 7, the 2nd Investigating Officer. There is nothing on record also to prove/infer that deliberately the investigation was given to P.W. 7 for helping P.Ws. 1, 2, 5 and 11.

20. However, none of the witnesses have stated anything which could bring home charges under Section 396 of the I.P.C. as against the appellants. There is no witness who has said about the occurrence having been committed. The factum of *dacoity* having been committed in the house of the deceased also appears to be suspicious. The reason for this Court to say so is that there is no evidence of any forcible entry of the miscreants in the house. On the contrary, P.W. 4, a regular helper of the deceased,



has stated before the Trial Court that after the occurrence, when she came back, she had to enter the house through the kitchen/backdoor and but for the deceased lying dead on a cot and some of the articles were missing from the house, there was no other evidence to indicate that a *dacoity*/burglary had taken place in the house.

21. In the absence of any evidence with respect to commission of crime of *dacoity* and the participation of the appellants in the aforesaid offence, this Court is of the view that the conviction of the appellants under Section 396 of the I.P.C. is not justified.

22. Thus, the judgment of conviction dated 20.01.2016 and order of sentence dated 23.01.2016, passed by the learned 12th Addl. District & Sessions Judge, Muzaffarpur in Sessions Trial No. 553 of 1993, arising out of Sakra P.S. Case No. 265 of 1992, as against the appellants under Section 396 of the I.P.C. is, hereby, set-aside. However, their conviction and sentence under Section 412 of the I.P.C. is affirmed and upheld.

23. Both the appeals are partly allowed.

24. Appellants/Mahesh Paswan, Chhathu Paswan @ Chhaththu Paswan and Vijay Paswan (*Cr. Appeal (SJ) No. 95 of 2016*), as has been submitted by the learned Advocates appearing on their behalf, have remained in jail



for more than five years, whereas appellant/Ajay Kumar Singh (*Cr. Appeal (SJ) No. 70 of 2016*) has remained in jail for about three years seven months and fifteen days.

25. The appellants, as has been noted above, have been convicted under Section 412 of the I.P.C. and have been sentenced to undergo rigorous imprisonment for five years for the aforesaid offence. Since appellants/Mahesh Paswan, Chhathu Paswan @ Chhaththu Paswan and Vijay Paswan (*Cr. Appeal (SJ) No. 95 of 2016*) have already completed five years and are in custody, they are directed to be released forthwith from jail, if not wanted in any other criminal case; whereas Appellant/Ajay Kumar Singh (*Cr. Appeal (SJ) No. 70 of 2016*) shall be released from jail after he completes the period of five years, if he is not wanted by that time in any other criminal case.

26. Let a copy of this judgment be transmitted to the Superintendent of concerned jail for its compliance, record and needful.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	14/08/2018
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